

REMARKS

This Amendment is in response to the final Office Action mailed March 16, 2005 (hereinafter, “the Office Action”). The specification is under objection and all pending claims (1-21) stand rejected under 35 U.S.C. § 102(e).

All references to the claims, except as noted, will be made with reference to the claim list provided in the Amendment submitted October 22, 2004. All references to “the Office Action,” except as noted, will be referencing the most recent Office Action dated March 16, 2005. Cited line numbers, will count every printed line, except the page header, but including section headings, unless line numbering is provided in the cited document, e.g., published patents. If there is any confusion or questions regarding any aspect of this Amendment, the Examiner is invited to contact the undersigned.

Status

Applicant notes with appreciation that all previous rejections and objections have been withdrawn in response to the Amendment filed October 22, 2004. Pending claims 1-6, 8-13, and 15-20 stand rejected under one of 35 U.S.C. §§ 102(b), 103(a) based on newly cited art.

Rejections - 35 U.S.C. § 102(b)

Claims 1, 3, 6, 8, 10, 13, 15, 17, and 20 stand rejected under 35 U.S.C. § 102(b) for being anticipated by “Technical White Paper,” VMware, Inc., hereinafter referred to as, “VMware.” Applicant respectfully traverses because not each and every limitation set forth in the claims is shown by the reference.

Claim 1 sets forth “promoting said compute capsule to a first class object status” (claim 1, lines 5-6). VMware does not teach promoting a compute capsule to a first class object status. The term, “first-class object” has meaning and weight among those having skill in the art. In particular, it denotes an object having no restrictions being placed on its use. For example, a first-class object can be passed as an argument to a function. VMware does not disclose manipulating compute capsules in this manner. Since VMware does not

teach promoting a compute capsule to a first class object, the limitations of claim 1 are not met by VMware. Applicant therefore respectfully submits that claim 1 is not anticipated by VMware. Claims 2-6 depend from claim 1 and should be allowed for at least the same reasons as claim 1.

Claim 8 sets forth “a first class object obtained by promoting said compute capsule to a first class object status” (lines 6-7) and claim 15 sets forth, “computer readable code configured to cause the computer to promote said compute capsule to a first class object status” (lines 8-9). Since these claims also set forth, in one form or another, promoting a compute capsule to a first class object, and VMware does not teach promoting a compute capsule to a first class object status, Applicant respectfully submits that claims 8 and 15 are likewise not anticipated by VMware. Claims 9-13 depend from claim 8 and claims 16-20 depend from claim 15, thus these dependent claims should be allowed for at least the same reasons as the respective claim on which they depend.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 2, 4, 5, 9, 11, 12, 16, and 18-19 stand rejected under 35 U.S.C. § 103(a) for being unpatentable over VMware in view of U.S. Patent 6,061,7975 issued to Dircks et al., hereinafter referred to as “Dircks.” Applicant respectfully traverses because not each and every limitation is taught or suggested by the prior art and further, because there was no motivation to combine the references at the time the invention was made.

Claims 2, 4, and 5 depend from independent claim 1 which is addressed above with regard to the rejection under 35 U.S.C. § 102(b). Dependent claims further define and distinguish the invention from the prior art. For example, claim 2 further defines “system resources” as comprising a guaranteed share of resources (lines 1-2). While Dircks does mention “allocating and facilitating access to resources such as programs and data files” (col. 1, lines 37-38) Dircks does not mention providing a guaranteed share of system resources. Providing a guaranteed share of resources enables users to achieve some performance isolation from other users of the same system. See page 11, lines 14-15 of the specification. There is no suggestion in VMware or Dircks for providing this capability.

Other dependent claims are similarly not adequately addressed by the prior art. Applicant requests reconsideration of the outstanding rejection and respectfully submits that the claims are now allowable.

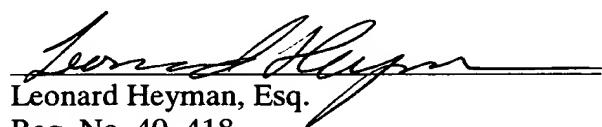
Applicant furthermore respectfully submits that the prior art contains inadequate motivation to combine VMware with Dircks. Dircks is related to an operating system, and as with all modern general purpose computing operating systems, includes functionality for apportioning resources among various processes and for restricting access to users and processes. VMware, however, is not an operating system, but a system monitor and application layer that relies on an underlying operating system to effectively virtualize system resources for other operating systems to provide additional virtual platforms on which programs may execute. A virtual machine software application like VMware relies on the underlying operating system to for resource apportionment and restrictions for the hardware and on the operating systems operating on the virtual machines for apportioning and restricting access to virtual resources and for distributing real resources among processes and users running on that operating system. Thus, there was no incentive at the time the invention was made to incorporate these functionalities into VMware – they would have been redundant.

Since there was no incentive to make the combination and/or modifications proposed in the Office Action, Applicant respectfully submits that the combination relies on impermissible hindsight reconstruction analysis – the Applicant's disclosure being the only source for motivation to combine the references. Applicant therefore requests reconsideration of the outstanding rejection and submits that the claims are now allowable.

For the reasons stated above, Applicant respectfully submits that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

If the Examiner has any questions concerning the present amendment, the Examiner is kindly requested to contact the undersigned at (408) 749-6900 X6933. If any other fees are due in connection with filing this amendment, the Commissioner is also authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP586). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,
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